

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Johann MAGG et al.  
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Group Art Unit: 3742  
Examiner: Reginald Alexander  
Title: COFFEE MACHINE COMPRISING A HEIGHT  
ADJUSTABLE SPOUT

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
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**APPEAL BRIEF**

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 – 12 are cancelled. Claims 13-38 are pending in the present application.

Claims 13 and 26 are rejected. Claims 14-25 and 27-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The final rejections of claims 13 and 26 are being appealed. Claims 13 and 26 are independent.

(4) STATUS OF AMENDMENTS

The Amendment B filed February 5, 2010, amended claim 38 to change its dependency from claim 26 to claim 27. The Advisory Action dated February 18, 2010, indicated that the amendment to claim 38 is entered for the purposes of appeal. No amendments are outstanding.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 13, is directed to a coffee machine (page 1, line 5; page 2, lines 18, 19, 25-30; page 5, lines 2-4, 24-26, new paragraph added by Amendment A; reference number 10, Figures 1-6) comprising a brewing chamber (page 2, line 28; page 5, lines 6, 7; reference number 12, Figures 2 and 4) provided with at least one outlet (page 2, lines 26, 29; page 4, line 14; page 5, lines 9-12, 17; reference number 16, Figures 2 and 4) for coffee and a spout (page 2, lines 27, 31-33; page 3,

lines 2-5, 12; page 4, line 15; page 5, lines 12, 13, 16, 26; reference number 14, Figures 1-6) which is height-adjustable relative to the outlet (page 2, line 31; page 3, lines 2-5, 26-28; page 4, lines 1-5; page 5, lines 12-18, 25-27; Figures 1-6) and is for ejecting coffee, and an impact surface (page 2, lines 25-27, 29; page 5, lines 11, 12, 17; reference number 44, Figures 2 and 4) arranged upstream thereof (Figures 2 and 4), wherein the impact surface is arranged at a fixed distance from the coffee outlet (Figures 2 and 4), wherein coffee emerging from the coffee outlet hits the impact surface (page 5, lines 10-11) and wherein the coffee is passed to the spout from the impact surface (page 5, line 12).

Claims 14-25 ultimately depend from claim 13.

A second exemplary embodiment, as defined by, for example, independent claim 26, is directed to a coffee machine (page 1, line 5; page 2, lines 18, 19, 25-30; page 5, lines 2-4, 24-26, new paragraph added by Amendment A; reference number 10, Figures 1-6) for dispensing coffee to a coffee receptacle, the coffee machine comprising: a brewing chamber (page 2, line 28; page 5, lines 6, 7; reference number 12, Figures 2 and 4), the brewing chamber having an outlet (page 2, lines 26, 29; page 4, line 14; page 5, lines 9-12, 17; reference number 16, Figures 2 and 4) for the discharge of coffee from the brewing chamber; an impact surface (page 2, lines 25-27, 29; page 5, lines 11, 12, 17; reference number 44, Figures 2 and 4) located downstream from the outlet and at a fixed distance from the outlet; and a spout (page 2, lines 27, 31-33; page 3, lines 2-5, 12; page 4, line 15; page 5, lines 12, 13, 16, 26; reference number 14, Figures 1-6) for discharging the coffee from the coffee machine, the spout having a discharge end from which the coffee is discharged from the coffee machine, the discharge end being located downstream from the impact surface (Figures 2 and 4), the spout being adjustable (page 2, line 31; page 3, lines 2-5, 26-28; page 4, lines 1-5; page 5, lines 12-18, 25-27; Figures 1-6) to adjust a vertical distance from the impact surface to the discharge end, and the spout being adjustable to adjust a vertical distance from the discharge end to a platform on which the coffee receptacle is to be placed, wherein the impact surface is

positioned vertically below the outlet (Figures 2 and 4) to provide a surface which coffee discharged from the outlet will hit before entering the spout.

Claims 27-38 ultimately depend from claim 26.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claims 13 and 26 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,009,792 (the Kraan reference) in view of DE 36 02 665 A1 (the Gockelmann reference)

(7) ARGUMENT

- A) Claims 13 and 26 are patentable under 35 U.S.C. §103(a) over the Kraan reference in view of the Gockelmann reference

The Office Action rejects claims 13, 26 and 38 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Kraan reference in view of the Gockelmann reference. The Advisory Action indicates that claim 38 is objected to and is no longer rejected. As a result, this rejection applies only to claims 13 and 26. Appellants respectfully traverse this rejection.

i) Claim 13

Claim 13 includes the feature of a spout which is height-adjustable. The Office Action does not assert that Kraan shows a height adjustable spout. The Office Action applies Gockelmann as disclosing a height adjustable spout and asserts that it would have been obvious to combine the spout of Gockelmann with the machine of Kraan. Appellants respectfully submit that Gockelmann does not disclose a height adjustable spout.

Appellants submit that Gockelmann discloses not one spout that is height adjustable, but instead three fixed-height elements, each with its own opening. As shown in Fig. 1,

Gockelmann has three tubular elements 14, 12 and 7. As shown in Fig. 1, element 14 with opening 10b is used for short cups. As shown in Fig. 4, element 12 with opening 13 is used for intermediate height containers such as mugs. As shown in Fig. 5, element 7 with opening 8 is used for tall containers such as coffee pots. Depending on the height of the container being used, a different one of the tubular elements is chosen.

In stark contrast to Gockelmann, the coffee in the invention flows through the same spout and opening whether the spout is adjusted to its highest position or its lowest position. This is reflected in the “a spout which is height-adjustable” and “wherein the coffee is passed to the spout” language used in claim 13. This language clearly indicates that claim 13 is directed to a single spout that is height adjustable.

Appellants submit that if the combination of tubular elements 14, 12 and 7 of Gockelmann is to be considered the spout of claim 13, then coffee must be “passed to” each of elements 14, 12 and 7. This is the case when Gockelmann is used in the configuration shown in Figure 1. However, for the combination of tubular elements of Gockelmann to be considered height adjustable, tubular element 14 must be removed from the path through which coffee is passed (see Figure 4) and is therefore no longer part of a spout. As a result, Gockelmann does not show a height adjustable spout, it shows three fixed-height elements. If element 14 is to be considered a spout, then it is a fixed height spout. Similarly, if elements 12 and 7 are to be considered spouts, then they are each a separate fixed height spout.

ii)      Claim 26

Claim 26 includes the feature of a spout for discharging the coffee from the coffee machine, the spout having a discharge end from which the coffee is discharged from the coffee machine, the discharge end being located downstream from the impact surface, the spout being adjustable to adjust a vertical distance from the discharge end to a platform on which the coffee receptacle is to be placed.

As discussed above with regard to the rejection of claim 13, Gockelmann does not disclose one spout that is height adjustable. For an element of Gockelmann to correspond to the spout of claim 26, that element must have a discharge end from which the coffee is discharged from the coffee machine. None of the elements of Gockelmann that have a discharge end from which coffee is discharged from the coffee machine is also height adjustable. Element 14 is not height adjustable. Element 12 is not height adjustable. Element 7 is not height adjustable. The apparatus of Gockelmann at most involves the stacking of multiple spouts; it does not involve a spout that is height adjustable.

Appellants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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## CLAIMS APPENDIX

### Claims 1 - 12 (Canceled)

13. (Rejected) A coffee machine comprising a brewing chamber provided with at least one outlet for coffee and a spout which is height-adjustable relative to the outlet and is for ejecting coffee, and an impact surface arranged upstream thereof, wherein the impact surface is arranged at a fixed distance from the coffee outlet, wherein coffee emerging from the coffee outlet hits the impact surface and wherein the coffee is passed to the spout from the impact surface.

14. (Objected to) The coffee machine according to claim 13, wherein the spout comprises at least one spout support disposed in a guide which is vertically displaceable in said guide.

15. (Objected to) The coffee machine according to claim 14, wherein the spout support is provided with a handle for adjustment of its height.

16. (Objected to) The coffee machine according to claim 15, wherein the handle is provided at an end of the spout support on the discharge side.

17. (Objected to) The coffee machine according to claim 15, wherein the handle is provided at an end of the spout support on the inflow side.

18. (Objected to) The coffee machine according to claim 15, wherein the handle is connected to the spout support by means of an opening on the guide.

19. (Objected to) The coffee machine according to claim 18, wherein the opening is constructed as a vertical slot in which the handle connected to the spout support can be displaced upwards and downwards.

20. (Objected to) The coffee machine according to claim 15, wherein two spout supports are provided, these being jointly adjustable in height by means of a single handle.

21. (Objected to) The coffee machine according to claim 20, wherein the handle is arranged between the two spout supports.

22. (Objected to) The coffee machine according to claim 15, wherein the spout supports arranged in the guide can be displaced vertically independently of one another.

23. (Objected to) The coffee machine according to claim 22, wherein the guide has two slots in which respectively one handle connected to a spout support can be displaced independently upwards and downwards.

24. (Objected to) The coffee machine according to claim 14, wherein the spout supports are telescopic.

25. (Objected to) The coffee machine according to claim 14, wherein the coffee machine includes an espresso machine having a pressurized brewing chamber.

26. (Rejected) A coffee machine for dispensing coffee to a coffee receptacle, the coffee machine comprising:

a brewing chamber, the brewing chamber having an outlet for the discharge of coffee from the brewing chamber;

an impact surface located downstream from the outlet and at a fixed distance from the outlet; and

a spout for discharging the coffee from the coffee machine, the spout having a discharge end from which the coffee is discharged from the coffee machine, the discharge end being located downstream from the impact surface, the spout being adjustable to adjust a vertical distance from the impact surface to the discharge end, and the spout being adjustable

to adjust a vertical distance from the discharge end to a platform on which the coffee receptacle is to be placed,

wherein the impact surface is positioned vertically below the outlet to provide a surface which coffee discharged from the outlet will hit before entering the spout.

27. (Objected to) The coffee machine according to claim 26, wherein the spout comprises at least one outlet stub pipe disposed in a guide, the outlet stub pipe being vertically displaceable within the guide and having the discharge end at its lower end.

28. (Objected to) The coffee machine according to claim 27, wherein the outlet stub pipe is provided with a handle for vertical adjustment.

29. (Objected to) The coffee machine according to claim 28, wherein the handle is provided at the discharge end of the outlet stub pipe.

30. (Objected to) The coffee machine according to claim 28, wherein the handle is provided at an end of the outlet stub pipe opposite the discharge end.

31. (Objected to) The coffee machine according to claim 28, wherein the handle is connected to the outlet stub pipe through an opening on the guide.

32. (Objected to) The coffee machine according to claim 31, wherein the opening on the guide is a vertical slot in which the handle can be displaced vertically.

33. (Objected to) The coffee machine according to claim 28, wherein two outlet stub pipes are provided and the handle is a single handle, the outlet stub pipes being jointly vertically adjustable by the single handle.

34. (Objected to) The coffee machine according to claim 33, wherein the single handle is arranged between the two outlet stub pipes.

35. (Objected to) The coffee machine according to claim 28, wherein two outlet stub pipes are provided and two handles are provided, the outlet stub pipes being vertically adjustable independently of one another.

36. (Objected to) The coffee machine according to claim 35, wherein the guide has two vertical slots, each handle being connected to one of the outlet stub pipes through one of the vertical slots.

37. (Objected to) The coffee machine according to claim 27, wherein the outlet stub pipe telescopes within the guide.

38. (Objected to) The coffee machine according to claim 27, wherein the coffee machine has a pressurized brewing chamber.

Attorney Docket No.: 2004P00161WOUS

EVIDENCE APPENDIX

None

Attorney Docket No.: 2004P00161WOUS

**RELATED APPEALS APPENDIX**

None